



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live.

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Governor

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September 5, 2003

Docket #OAR 2003-0079
U.S. Environmental Protection Agency
EPA West (Air Docket)
1200 Pennsylvania Avenue, N.W., Room B108
Mail Code: 6102T
Washington, DC 20460

RE: Proposed Rule to Implement the 8-Hour Ozone
National Ambient Air Quality Standard – Draft
Regulatory Text

Dear Acting Administrator Horinko:

This letter provides the Indiana Department of Environmental Management's (IDEM) comments regarding the Draft Regulatory Text for the Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard. These comments supplement Commissioner Kaplan's comments concerning the proposed rule to implement the 8-hour ozone standard, dated July 31, 2003. IDEM appreciates the opportunity to provide input on this important clean air issue.

The State of Indiana is strongly committed to assuring clean, healthy air for all of its citizens. Tremendous progress has been made in the past two decades: only one area of the state continues to violate the one hour ozone standard. Investment in pollution control technology, innovative manufacturing approaches and advances in motor vehicle standards have lead to these improvements. The combination of national measures and local implementation plans, driven by planning and attainment deadlines contained in the Clean Air Act, has been effective, although achievement of the goals has taken longer than intended.

IDEM is supportive of the implementation option that EPA has chosen, which uses Subpart 1 of the Clean Air Act for areas where ozone values meet the one hour standard but exceed the eight hour standard. This approach is simpler and provides greater flexibility for communities. However, for areas designated under Subpart 2 of the Clean Air Act, U.S. EPA should grant flexibility to the states in choosing local controls that are the most cost effective, as opposed to mandatory controls that may be ineffective for certain communities.

IDEM supported EPA's original proposal of a "transitional" classification for areas that meet the one-hour standard, do not currently meet the eight hour standard, but will meet both standards upon the implementation of the NOx SIP Call. Most of Indiana's likely eight hour nonattainment areas are in this situation. IDEM's overriding concern is that EPA not impose mandatory new source review requirements on areas expected to attain the eight hour ozone standard with the implementation of existing state and federal requirements unless they fail to meet the eight hour standard by 2007. IDEM recommends that EPA defer until 2007 the implementation of mandatory measures, such as new source review and transportation conformity, in areas that will meet the eight hour ozone standard by 2007 (3 years following the implementation of the NOx SIP Call). These measures would go into effect if the area fails to comply with the standard by the close of the 2007 ozone season. If mandates for these areas are unavoidable, EPA should establish a less stringent form of new source review and transportation conformity. We address this further in Attachment A.

While it makes sense to avoid or minimize increases in emissions in nonattainment areas, we now know that these NSR requirements can have unintended consequences, that, in many cases, just push new development to the outskirts of a nonattainment area. As a result, these requirements have contributed to sprawl, loss of farmland and are inconsistent with policies that promote the development of brownfields. Development immediately adjacent to nonattainment areas can have just as deleterious an effect on local air quality as if the development occurred in the nonattainment area itself.

Indiana's specific comments on the Draft Regulatory Text are provided in Attachment A to this letter. We appreciate the opportunity to provide comments and recommendations to U.S. EPA concerning this matter. Likewise, we look forward to working with your staff as U.S. EPA moves forward with the implementation process. If you or your staff has any questions about Indiana's comments, or wish to discuss them with us further, please contact me at 317-232-8222 or jmccabe@dem.state.in.us.

Sincerely,



Janet G. McCabe
Assistant Commissioner
Office of Air Quality

LFK/jgm/sad

Attachments

cc: Cheryl Newton, EPA-Region 5
J. Elmer Bortzer, EPA-Region 5

IDEM's specific comments on the draft regulatory text are as follows:

Section 51.903 Classification and Attainment Date Provisions of Subpart 2

- (a) IDEM agrees with EPA's proposed approach for designating and classifying areas under the 8-hour standard. However, EPA should grant maximum flexibility to the states in implementing the eight-hour ozone standard, including all decisions concerning local control strategies for areas designated under Subpart 2 of the Clean Air Act. If EPA is unable to avoid requiring mandatory controls such as vehicle emissions testing, states should be given flexibility in addressing the control reduction requirements. For instance, instead of a mandated basic or enhanced vehicle inspection program, states should be granted the flexibility to implement hybrid programs that use current technology like remote sensing and mobile on-board diagnostics testing.
- (b) IDEM supports the flexibility for areas to be reclassified to a lower classification providing the area can attain the standard by an earlier attainment date, but we are concerned that the SIP submittal deadline of April 2005 may be unrealistic in some cases. Although we recognize the importance of a SIP/reclassification request being submitted as expeditiously as possible, it will be difficult for states to accomplish this, especially if new or additional modeling is required. Additionally, for moderate nonattainment areas that are eligible for a lower Subpart 2 classification based on the State's ability to demonstrate attainment by 2007, mandated controls should be deferred until 2007. If the area fails to attain the standard by 2007, those measures could be required and implemented prior to the original attainment deadline of 2010. Also, it would be helpful for EPA to clarify the potential consequences should the area be unable to attain the standard by 2007.

Section 51.904 Classification and Attainment Date Provisions for Subpart 1

- (a) EPA should grant more flexibility in defining and designating areas affected by overwhelming transport. The fact that a county may abut or be part of a Metropolitan Statistical Area (MSA) should not exclude its eligibility. For example, a monitor was placed in Jackson County, Indiana, in 1999 to monitor transport in a rural area upwind of Greater Indianapolis. As it turns out, the Jackson County site monitors a value above the 8-hour standard. Jackson County is not part of an MSA, has extremely low population density, contains no major sources for air pollution, and experiences low growth (population and business). However, because Jackson County abuts counties that are part of an MSA, EPA's current guidance would prohibit Jackson County from being designated as an area affected by overwhelming transport, though such a classification would be most fitting. Indiana has three counties that IDEM believes to qualify as areas affected by overwhelming transport, however, all three currently fail to meet EPA's criteria within current guidance.
- (b)(1) Areas that are designated under Subpart 1 that would have an attainment deadline of 2010 if designated under Subpart 2, should be granted until November 2009, instead of April 2009, to reach attainment to provide for three years of monitoring data following SIP submittal in 2007.

- (b)(2) Due to the anticipated benefits of the NO_x SIP Call and federal engine and fuel standards, Indiana will likely have eight areas qualify for an early (2007) attainment date. This is an option that Indiana supports, provided that states are given eighteen months to submit attainment SIPs and all mandated controls are deferred until the early attainment deadline.

General comments applicable to Sections 51.903 and 51.904:

- EPA should establish attainment deadlines with a fall date after the close of the ozone season as opposed to an April deadline. This would be consistent with two decades of past practice and only makes sense given the seasonal nature of ozone pollution. It would also be consistent with the assumptions made for the NO_x SIP Call controls, which presumed that states would have three full years (2005-2007) to realize the benefits associated with those reductions.
- EPA has recognized the importance of integrating planning for eight-hour ozone and PM_{2.5} as much as possible, given the overlap in technical work and likely control strategies. States and EPA are currently developing modeling tools that concurrently assess the impacts of control strategies on ozone, fine particles and regional haze. Once EPA designates the ozone and PM_{2.5} nonattainment areas, planning requirements and deadlines for the two pollutants should be consistent so that states can prepare a single SIP to address both standards.

Section 51.905 Transition from 1-hour NAAQS to the 8-hour NAAQS

- (a)(1)(ii) For areas that have met required obligations and have a fully approved attainment demonstration SIP for the 1-hour NAAQS, IDEM supports not requiring a 10 percent reduction from the baseline emissions inventory. However, requiring a SIP submittal that provides a 10 percent reduction for areas affected by this Section within 1 year is unrealistic. EPA should grant states a minimum of 2 years for such submittals.
- (a)(2) IDEM is supportive of the anti-backsliding provisions contained within the draft regulatory text.
- (b) For areas that have met the 1-hour standard prior to the revocation of the standard, IDEM supports giving the states flexibility to shift previous 1-hour SIP obligations to the 8-hour SIP as contingency measures, if appropriate.
- (e)(1) IDEM agrees with EPA's approach to allow states to request the removal of obligations to submit an 8 year update to 1-hour maintenance plans and implement contingency measures upon a violation of the standard. However, the SIP modifications to address these issues should be incorporated as part of the 8-hour SIP submittals, rather than a separate process.

- (e)(3) Upon revoking the 1-hour standard, IDEM encourages EPA to consider allowing transportation conformity to be demonstrated to the 1-hour maintenance SIP budgets, where applicable, until 8-hour SIP budgets are determined adequate. The use of regional mobile emissions budgets for the demonstration of conformity is a more efficient method for assessing regional air quality impacts.

Section 51.910 Reasonable Further Progress (RFP) Requirements

- (a)(1)(i) IDEM agrees with the RFP provision, however, the provision should only apply to the newly designated portion of an area, not the entire nonattainment area. Also, IDEM feels it important for EPA to allow the reductions associated with the NO_x SIP Call to be credited for RFP purposes.

Section 51.912 Applicability of Reasonably Available Control Technology (RACT)

- (b)(2)(ii) IDEM is supportive of the provision requiring states to submit a SIP ensuring that RACT controls apply for all portions of the nonattainment area where RACT obligations do not currently apply.
- (b)(3) IDEM is agreeable with the provision concerning NO_x RACT requirements, which states that for purposes of meeting the requirements in areas located in the State subject to the NO_x SIP call, RACT SIP requirements are met: (1) for sources subject to the State's EPA-approved cap-and-trade program; (2) for cement kilns that are subject to a SIP approved obligation to install and operate controls that are expected to achieve at least a 30 percent reduction from uncontrolled levels.